

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : **Criminal No. 16-130-02**

WHEELER K. NEFF :

JUDGMENT AND PARTIAL FINAL ORDER OF FORFEITURE

AND NOW, this _____ day of _____, 2022, upon consideration of the Government's Motion for Entry of Judgment and Partial Final Order of Forfeiture, for the reasons set forth in the motion, the Court finds the following:

WHEREAS, on March 29, 2018, this Court entered a Judgment and Preliminary Order of Forfeiture which forfeited to the United States the defendant's interest in the following asset, referred to hereafter as "the Subject Property":

- a. All right, title and interest in real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas, with all improvements, appurtenances and attachments thereon; and
- b. Real property located at 118 School Road, Wilmington, Delaware, with all improvements, appurtenances, and attachments thereon;¹ and

WHEREAS, pursuant to 21 U.S.C. § 853(n), the government published notice of the Subject Property in the Judgment and Preliminary Order of Forfeiture on an official government internet website for a period of at least 30 consecutive days; and

¹ Based on the record and for the reasons set forth in the Court's findings of fact and conclusions of law dated March 29, 2018, the Court found, beyond a reasonable doubt, that 12.11% of the square footage of 118 School Road, Wilmington, Delaware was subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(2)(D). Therefore, 12.11% of Defendant Neff's right, title, and interest in the property identified in Paragraph 11(a) of this Order was forfeited to the United States.

WHEREAS, pursuant to 21 U.S.C. § 853(n), the government also provided direct written notice to all persons/entities known to have alleged an interest in the Subject Property subject to the Judgment and Preliminary Order of Forfeiture; and

WHEREAS, on April 16, 2018, the real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas was sold (hereinafter "Walnut Creek Property"), and \$177,938.52 was wired to the United States Marshals Service as cash in lieu of forfeiture of the Walnut Creek Property; and

WHEREAS, on May 15, 2018, Carol Neff ("Claimant Neff") filed an ancillary petition claiming an interest in 118 School Road, Wilmington, Delaware (hereinafter the "School Road Property"); and

WHEREAS, no other person or entity filed an ancillary petition claiming an interest in the Subject Property; and

WHEREAS, the ancillary petition filed by Claimant Neff has been resolved with respect to the School Road Property, specifically memorialized in a written settlement agreement between and among the Government and Claimant Neff signed on November 16, 2020 (hereinafter "Settlement Agreement") whereby Claimant Neff agreed to pay \$35,000 to the government in final satisfaction of her ancillary petition, Claimant Neff and the government agreed that the \$35,000 was considered the Substitute Res subject to forfeiture in place of the 12.11% of Wheeler Neff's interest in the School Road Property, and Claimant Neff agreed that all right, title, and interest in the \$35,000 Substitute Res shall be forfeited to the United States, and not to contest the entry of a Final Order of Forfeiture consistent with the Agreement, forfeiting the Substitute Res; and

WHEREAS, on January 7, 2021, Claimant Neff wired funds in the amount of \$35,000 to the United States Marshals Service as directed by the Settlement Agreement; and

WHEREAS, based on the criminal conviction and the Judgment and Preliminary Order of Forfeiture (ECF No. 387), the defendant had an interest in the Subject Property that was subject to forfeiture pursuant to Federal Rule of Criminal Procedure 32.2(e) and 18 U.S.C. § 1963(a).

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. All right, title and interest of all persons, their heirs and assigns, in the following property:
 - a. \$35,000 as Substitute Res subject to forfeiture in place of the School Road Property
 - b. \$177,938.52 in lieu of real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas, with all improvements, appurtenances and attachments thereon; and

is hereby fully and finally forfeited to the United States of America pursuant to 18 U.S.C. § 1963(a).

2. All right, title and interest of all persons, their heirs and assigns in \$35,000 as Substitute Res subject to forfeiture in place of the School Road Property and \$177,938.52 in lieu of the Walnut Creek Property, is hereby vested in the United States of America.

3. The \$212,938.52, shall be applied to the outstanding Forfeiture Money Judgment amount of \$356,032.75, ordered as part of the March 29, 2018, Preliminary Order of Forfeiture.

4. The United States Marshals Service, and/or its designee, shall dispose of the forfeited property in accordance with the law and the rules of this Court.

5. The Clerk of Court shall provide three certified copies of this Order to counsel for the government.

HONORABLE EDUARDO C. ROBRENO
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
:
v. : **Criminal No. 16-130-02**
:
WHEELER K. NEFF :

MOTION OF UNITED STATES OF AMERICA FOR ENTRY OF JUDGMENT AND PARTIAL FINAL ORDER OF FORFEITURE

The United States of America, by and through its attorneys, Jennifer Arbittier Williams, United States Attorney for the Eastern District of Pennsylvania, Mark B. Dubnoff, Lauren R. Baer, and Elizabeth M. Ray, Assistant United States Attorneys, hereby moves for the entry of a Judgment and Partial Final Order of Forfeiture. In support of this motion, the government avers as follows:

1. On March 29, 2018, this Court entered a Judgment and Preliminary Order of Forfeiture. ECF No. 387. The Court, pursuant to Federal Rule of Criminal Procedure 32.2(e) and 18 U.S.C. § 1963(a), (m), forfeited to the United States the defendant's interest in the following property, referred to hereafter as "the Subject Property":

- a. All right, title and interest in real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas, with all improvements, appurtenances and attachments thereon; and
- b. Real property located at 118 School Road, Wilmington, Delaware, with all improvements, appurtenances, and attachments thereon.¹

¹ Based on the record and for the reasons set forth in the Court's findings of fact and conclusions of law dated March 29, 2018, the Court found, beyond a reasonable doubt, that 12.11% of the square footage of 118 School Road, Wilmington, Delaware was subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(2)(D). Therefore, 12.11% of Defendant Neff's right, title, and interest in the property identified in Paragraph 11(a) of this Order was forfeited to the United States.

2. The government has complied with the notice provisions of 21 U.S.C. § 853(n). Specifically, the government provided general notice through publication on an official government internet site (www.forfeiture.gov) for a period of at least 30 consecutive days. The notice period for the assets identified above in paragraph one, began on April 18, 2018, and ended on May 17, 2018. See Exhibit A.

3. Following the entry of the Preliminary Order of Forfeiture, the government also provided direct written notice to all parties known to have an alleged interest in the Subject Property.

4. On April 16, 2018, the real property located at assessor's parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas was sold (hereinafter "Walnut Creek Property"), and \$177,938.52 was wired to the United States Marshals Service as cash in lieu of forfeiture of the Walnut Creek Property.

5. On May 15, 2018, Carol Neff (hereinafter "Claimant Neff") filed an ancillary petition as to the real property located at 118 School Road, Wilmington, Delaware (hereinafter "School Road Property"). ECF No. 465.

6. To date, no other third party has petitioned this Court for a hearing to adjudicate the validity of any alleged interest in the Subject Property referenced in paragraph one. The time allowed by statute for filing an ancillary claim has passed, and accordingly, any subsequent filed claims would now be time barred.

7. The Government and Claimant Neff have engaged in good faith negotiations to resolve her outstanding claim to the School Road Property.

8. On November 16, 2020, the Government and Claimant Neff executed a written settlement agreement as to the disposition of the School Road Property (hereinafter "Settlement

Agreement”). See Exhibit B. Under the Settlement Agreement, Claimant Neff agreed to withdraw her ancillary petition within seven (7) days of the signing of the Agreement. Claimant Neff also agreed that within sixty (60) days of the signing of the Agreement, she would pay \$35,000 to the government as part of the Agreement, in final satisfaction of her ancillary petition. Claimant Neff and the government further agreed that the \$35,000 was considered the Substitute Res subject to forfeiture in place of the 12.11% of Wheeler Neff’s interest in the School Road Property. Lastly, Claimant Neff agreed that all right, title, and interest in the Substitute Res shall be forfeited to the United States, and not to contest the entry of a Final Order of Forfeiture consistent with the Agreement, forfeiting the Substitute Res.

9. On January 7, 2021, Claimant Neff wired funds in the amount of \$35,000 to the United States Marshals Service as directed by the Settlement Agreement.

10. Based on facts set forth in the government’s sentencing memoranda, in the government’s previous forfeiture filings, specifically the Preliminary Order of Forfeiture, and the Settlement Agreement, the government avers that the defendant had an interest in the following property:

- a. \$35,000 as Substitute Res subject to forfeiture in place of the School Road Property, and
- b. \$177,938.52 in lieu of real property located at assessor’s parcel number 075210000000500, Walnut Creek, Glen Elder, Kansas, with all improvements, appurtenances and attachments thereon; and

such property is subject to forfeiture pursuant to Federal Rule of Criminal Procedure 32.2(e) and 18 U.S.C. § 1963(a); and Claimant Neff releases her claims to such property.²

² The preliminary order of forfeiture forfeits the defendant’s interest in the property and is a conclusive final order as to the defendant’s interest in the property. *United States v. Pelullo*, 178 F.3d 196, 202 (3d Cir. 1999); *see also* Fed.R.Crim.P. 32.2(b). The defendant generally has no standing to participate in the ancillary proceeding that takes place after the forfeiture order is entered at sentencing. *Id.*; *see also* Fed.R.Crim.P. 32.2(c); 21 U.S.C. § 853(n)(2) (providing that during ancillary process

WHEREFORE, for the reasons stated above, the government requests that this Court grant the motion and enter the attached Judgment and Partial Final Order of Forfeiture.

JENNIFER ARBITTIER WILLIAMS
United States Attorney

/s/ Sarah L. Grieb
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Assistant United States Attorney
Chief, Asset Recovery and Financial Litigation

/s/ Mark B. Dubnoff
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/s/ Lauren R. Baer
LAUREN R. BAER
Assistant United States Attorney

/s/ Elizabeth M. Ray
ELIZABETH M. RAY
Assistant United States Attorney

Date: March 8, 2022

individuals *other than the defendant* may assert legal interests in property that has been ordered forfeited to the United States). “This lack of standing suggests that the defendant no longer has an interest in the property” after the entry of the preliminary order of forfeiture. *Pelullo*, 178 F.3d at 202.

CERTIFICATE OF SERVICE

I certify that a copy of the MOTION OF UNITED STATES OF AMERICA FOR ENTRY OF JUDGMENT AND PARTIAL FINAL ORDER OF FORFEITURE was served by electronic case filing system and/or first class mail upon:

Carol D. Neff
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Wilmington, DE 19803

Adam Cogan, Esquire
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/s/ Lauren R. Baer
LAUREN R. BAER
Assistant United States Attorney

Date: March 8, 2022